

Chapter 77. Regulation 28•Variable Contract Regulation

§7700. Authority

A. This regulation is adopted and promulgated by the Department of Insurance pursuant to the authority granted by R.S. 22:1500 and the Administrative Procedure Act, R.S. 49:950 et seq. This regulation replaces and repeals the regulation of similar purpose which took effect on January 1, 1969.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1500 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, January 1969, amended LR 24:67 (January 1998).

§7701. Definitions

Agent • any person, corporation, partnership, or other legal entity which, under the laws of this state, is licensed as an insurance agent.

Company • any insurer which possesses a certificate of authority to conduct life insurance business or annuity business in the state of Louisiana.

Contract on a Variable Basis or *Variable Contract* • any policy or contract which provides for annuity benefits which may vary according to the investment experience of any separate account or accounts maintained by the insurer as to such policy or contract, as provided for in R.S. 22:1500.

Variable Contract Agent • an agent who shall sell or offer to sell any contract on a variable basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1500 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, January 1969, amended LR 24:67 (January 1998).

§7703. Qualification of Insurance Companies to Issue Variable Contracts

A. No company shall deliver or issue for delivery variable contracts within this state unless the commissioner is satisfied that its condition and method of operation in connection with the issuance of such contracts will not render its operation hazardous to the public or its policyholders in this state. The commissioner shall consider the following in making such a determination:

1. the history and financial condition of the company;
2. the character, responsibility, and fitness of the officers and directors of the company; and
3. the law and regulation under which the company is authorized in the state of domicile to issue variable contracts.

B. A company's subsidiary or affiliate, by common management or ownership, may be deemed by the commissioner to have satisfied the provisions of Paragraph A.2 of this Section if either the company or its subsidiary or affiliate satisfies the provisions of Paragraph A.2 of this Section, provided, further, that companies having a satisfactory record of doing business in this state for a period of at least three years may be deemed to have satisfied the commissioner with respect to Paragraph A.2 of this Section.

C. Before any company shall deliver or issue for delivery variable contracts, it shall submit to the commissioner:

1. a general description of the kinds of variable contracts it intends to issue;
2. if requested by the commissioner, a copy of the statutes and regulations of its state of domicile under which it is authorized to issue variable contracts; and
3. if requested by the commissioner, biographical data with respect to officers and directors of the company.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1500 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, January 1969, LR 24:68 (January 1998).

§7705. Separate Account or Separate Accounts

A. A domestic company issuing variable contracts shall establish one or more separate accounts pursuant to R.S. 22:1500.

1. Unless otherwise approved by the commissioner, assets allocated to a separate account shall be valued at their market value on the date of valuation or, if there is no readily available market, then as provided under the terms of the contract or the rules or other written agreement applicable to such separate account, provided that the portion of the assets of such separate account equal to the company's reserve liability with regard to the benefits guaranteed as to amount and duration, and funds guaranteed as to principal amount or stated rate of interest shall be valued in accordance with the rules otherwise applicable to the company's asset.

2. If and to the extent so provided under the applicable contracts, that portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the company may conduct.

3.a. Notwithstanding any other provision of law, a company may:

i. with respect to any separate account registered with the Securities and Exchange Commission as a unit investment trust, exercise voting rights in connection with any securities of a regulated investment company registered under the Investment Company Act of 1940 and held in such separate accounts in accordance with instructions from persons having interests in such accounts ratably, as determined by the company; or

ii. with respect to any separate account registered with the Securities and Exchange Commission as a management investment company, establish for such account a committee, board, or other body, the members of which may or may not be otherwise affiliated with such company and may be elected to such membership by the vote of persons having interests in such account ratably, as determined by the company. Such committee, board, or other body may have the power, exercisable alone or in conjunction with others, to manage such separate account and the investment of its assets.

b. A company, committee, board, or other body may make such other provisions in respect to any such separate account as may be deemed appropriate to facilitate compliance with requirements of any federal or state law now or hereafter in effect, provided that the commissioner approves such provisions as not hazardous to the public or the company's policyholders in this state.

4. No sale, exchange, or other transfer of assets may be made by a company between any of its separate accounts or between any other investment account and one or more of its separate accounts unless, in case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made, and unless such transfer, whether into or from a separate account, is made:

a. by a transfer of cash; or

b. by a transfer of securities having a valuation which could be readily determined in the marketplace, and provided that such transfer of securities is approved by the commissioner. The commissioner may authorize other transfers among such accounts if, in his opinion, such transfers would not be inequitable.

5. The company shall maintain in each such separate account assets with a value at least equal to the reserves and other contract liabilities with respect to such account, except as may otherwise be approved by the commissioner.

6. Rules under any provision of R.S. 22:1500 or any regulation applicable to the officers and directors of insurance companies with respect to conflicts of interest shall also apply to members of any separate account's committee, board, or other similar body. No officers or directors of such company nor any member of the committee, board, or separate account shall receive directly or indirectly any commission or any other compensation with respect to the purchase or sale of assets of such separate account.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1500 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, January 1969, amended LR 24:68 (January 1998).

§7707. Filing of Contracts

A. The filing requirements applicable to variable contracts shall be those filing requirements otherwise applicable under existing statutes and regulations of this state with respect to individual and group life insurance and annuity contract form filings, to the extent appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1500 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, January 1969, amended LR 24:69 (January 1998).

§7709. Contracts Providing for Variable Benefits

A. Any variable contract delivered or issued for delivery in this state shall contain a statement of the essential features of the procedures to be followed by the insurance company in determining the dollar amount of benefits. Any such contract providing benefits which vary during the payment period, including a group contract and any certificate issued thereunder, shall state that the periodic payments will vary to reflect investment experience and shall contain, on its first page, a clear statement to the effect that the periodic payments thereunder are on a variable basis. Any such contract which provides values which are vested in an annuitant under an individual contract or in the holder of a certificate under a group contract prior to the commencement of the payment period, which values will vary to reflect investment experience, shall state that such values are on the variable basis. Any certificate issued under a group contract providing such variable values shall also contain the statements required by the preceding sentence. If any such contract provides such variable periodic payments, as well as such variable values, the statements required by the preceding sentences may be combined.

B. Illustrations of benefits payable under any variable contract shall not include projections of past investment experience into the future or attempted predictions of future investment experience, provided that nothing contained herein is intended to prohibit use of hypothetical assumed rates of return to illustrate possible levels of annuity payments.

C. 1. Any individual variable annuity contract delivered or issued for delivery in this state shall stipulate the investment increment factors to be used in computing the dollar amount of variable benefits or other contractual payments or values thereunder, and may guarantee that expenses and/or mortality results shall not adversely affect such dollar amounts. If not guaranteed, the expense and mortality factors shall also be stipulated in the contract.

2. In computing the dollar amount of variable benefits or other contractual payments or values under an individual variable annuity contract:

a. the annual net investment increment assumption shall not exceed 5 percent, except with the approval of the commissioner;

b. to the extent that the level of benefits may be affected by future mortality results, the mortality factor shall be determined from the Annuity Mortality Table for 1949, Ultimate, or any modification of that table not having a higher mortality rate at any age, or, if approved by the commissioner, from another table.

3. *Expense*, as used in this Subsection, may exclude some or all taxes, as stipulated in the contract.

4. Variable annuity contracts delivered or issued for delivery in this state may include as an incidental benefits provision for payment on death during the deferred period of an amount not in excess of the greater of the sum of the premiums or stipulated payments paid under the contract or the value of the contract at the time of death; such provisions will not be deemed to be contracts of life insurance and therefore not subject to the provisions of the Insurance Law governing life insurance. Provision for any other benefit on death during the deferred period will be subject to such insurance provisions.

5. The reserve liability for variable annuities shall be established pursuant to the requirements of the standard valuation law, in accordance with actuarial procedures that recognize the variable nature of the benefits provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1500 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, January 1969, LR 24:69 (January 1998).

§7711. Required Reports

A. Any company issuing individual variable contracts providing benefits in variable amounts shall mail to the contract holder, at least once in each contract year after the first, at his last address known to the company, a statement or statements reporting the investments held in the separate account, and in the case of contracts under which payments have not yet commenced, a statement reporting as of a date not more than four months previous to the date of mailing:

1. the number of accumulation units credited to such contracts and the dollar value of a unit; or
2. the value of the contract holder's account.

B. The company shall submit annually to the insurance commissioner a statement of the business of its separate account or accounts in such form as may be prescribed by the National Association of Insurance Commissioners.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1500 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, January 1969, amended LR 24:69 (January 1998).

§7713. Foreign Companies

A. If the law or regulation in the place of domicile of a foreign company provides a degree of protection to the policyholders and the public which is substantially equal to that provided by these regulations, the commissioner, to the extent deemed appropriate by him in his discretion, may consider compliance with such law or regulation as compliance with these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1500 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, January 1969, amended LR 24:69 (January 1998).

§7715. Licensing of Agents and Other Persons

A.1. No agent shall be eligible to sell or offer for sale a contract on a variable basis unless, prior to making any solicitation or sale of such a contract, that agent is licensed to sell life insurance in this state and presents evidence of satisfactorily passing one of the following written examinations upon securities and variable contracts:

- a. any state securities examination accepted by the Securities and Exchange Commission;
- b. the National Association of Securities Dealers, Inc. examination for principals or examination for qualification as a registered representative;
- c. the various securities examinations required by the New York Stock Exchange, the American Stock Exchange, the Pacific Stock Exchange, or any other registered national securities exchange;
- d. the Securities and Exchange Commission test given pursuant to Section 15(b)(8) of the Securities Exchange Act of 1934.

2. Any agent who participates only in the sale or offering for sale of variable contracts that are not registered under the Federal Securities Act of 1933 need not be licensed as a variable contract agent.

3. Any agent applying for a license as a variable contract agent shall do so by filing an application. All applications for a license shall be in writing on uniform forms prescribed by the commissioner of Insurance.

B. Any applicant for license as a variable contract agent shall present evidence that the applicant is currently registered with the Federal Securities and Exchange Commission as a broker-dealer or is currently associated with a broker-dealer and has met qualification requirements with respect to such association.

C. Except as modified by this regulation, refer to Part XXIV and Insurance Regulations of this department governing the licensing of life insurance agents.

D. Any person licensed in this state as a variable contract agent shall immediately report to the commissioner:

1. any suspension or revocation of the agent's variable contract license or life insurance license in any other state or territory of the United States;
2. the imposition of any disciplinary sanctions (including the suspension or expulsion from membership, suspension or revocation of or denial of registration) imposed upon him/her by the National Securities Exchange, The National Securities Association, or any federal, state, or territorial agency with jurisdiction over securities or contracts on a variable basis;
3. any judgment or injunction entered against him/her on the basis of conduct deemed to have involved fraud, deceit, misrepresentation, or violation of any insurance or securities law or regulation.

E. The commissioner may reject any application or suspend, revoke, or refuse to renew any agent's variable contract license upon any ground that would bar such applicant or such agent from being licensed to sell life insurance contracts in this state. The rules governing any proceeding relating to the suspension or revocation of an agent's life insurance license shall also govern any proceeding for suspension or revocation of an agent's variable contract license.

F. An agent's variable contract license shall be renewed annually upon the approval of a variable contract agent appointment. A certificate of license status dated within 90 days must be submitted with the appointment for any nonresident agent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1500 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, January 1969, amended LR 24:69 (January 1998).